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FOR PUBLIC AFFAIRS STAFF

PROGRAM The MacNeil/Lehrer NewsHour STATION WETA-TV PBS Network

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SUBJECT Publising of Leaked Classified Information

JIM LEHRER: Next, the case of the U.S. Central Intelligence Agency versus the U.S. press. The charge? Illegally reporting on American intelligence methods and operations. CIA head William Casey is the main accuser. The accused are the Washington Post, the New York Times, the Washington Times, and Newsweek and Time magazines. Casey told the Justice Department he wanted the five criminally prosecuted for publishing certain leaked information concerning the Libyan bombing raid.

The specific charge against the Post, for instance, centered on an April 15th front-page story which said, "The United States has the capability to intercept and decode Libya's sensitive diplomatic communications. Sources said the decoding was done by the National Security Agency, whose code-breaking capability traditionally has been one of the most closely guarded intelligence secrets."

Casey reportedly believes that violates a 1950 law called Section 798, designed to keep U.S. intelligence techniques secret.

The Post says that law has never been used against news organizations. And besides, the story in question was merely a follow-up to what President Reagan said in his nationally televised address right after the raid.

PRESIDENT REAGAN: The evidence is now conclusive that the terrorist bombing of La Belle discotheque was planned and executed under the direct orders of the Libyan regime. On March 25th, more than a week before the attack, orders were sent from Tripoli to the Libyan People's Bureau in East Berlin to conduct a terrorist attack against Americans to cause maximum and

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indisciminate casualties. Libya's agents then planted the bomb.

On April 4th, the People's Bureau alerted Tripoli that the attack would be carried out the following morning. The next day they reported back to Tripoli on the great success of their mission.

Our evidence is direct, it is precise, it is irrefutable.

We have solid evidence about other attacks Qaddafi has planned against United States installations and diplomats, and even American tourists.

LEHRER: Nothing has happened yet, except the exchange of Casey charges and the news organizations' defense. But many believe a formal criminal charge against a U.S. news organization may be coming soon -- if not on the Libya story, another -- because Casey's anger over the leaking of sensitive stories is shared by President Reagan and other high officials of his Administration.

We join the argument tonight with a former CIA official, a Washington Post reporter, and a press scholar who has studied the anatomy of the Washington news leak.

First, the former CIA man. He is George Carver, who spent 26 years with the agency, serving, among other things, as special assistant to three CIA Directors and as Deputy for National Intelligence. He is now a senior fellow at the Georgetown University Center for Strategic and International Studies.

Mr. Carver, you support the Casey position that news organizations should be prosecuted for certain stories?

GEORGE CARVER: Certain particular types of stories, Jim, that violate Section 798 of Title 18 of the U.S. Code dealing with communications intelligence. I think that that violation of the law that's been on the statute books for 36 years should be prosecuted.

Casey was firing a warning shot across those news organizations' bow. He has many admirable traits, of which subtlety and finesse are not always the chief and most notable ones. He is doing nothing that Justice Whizzer White, Byron White didn't do in the Pentagon Papers case when White put the newspapers clearly under notice about 798 and said they must face the consequences if they publish, and he would have no difficulty sustaining convictions brought under that section of the U.S. Code.

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LEHRER: Now, it specifically -- it only deals with intelligence methods and techniques? Is that correct?

CARVER: No, it's even more precise than that. If you have 20 seconds, I can read the operative language.

LEHRER: I've got it. I've got it.

CARVER: "Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes or uses in any manner prejudicial to the safety or interest of the United States, or for the benefit of any foreign government to the detriment of the United States, any classified information concerning the nature, preparation or use of any code or cipher or cryptographic system design, construction, use, maintenance, repair of any cryptographic device, communications intelligence activities of the United States or any foreign government, or intelligence obtained by the process of communications intelligence from the communications of any foreign government, shall be fined not more than $10,000 or imprisoned not more than 10 years."

It's narrow, it's tightly drawn. But on that, I think it's important.

LEHRER: Why is it important?

CARVER: It's important, Jim, because if you compromise communications intelligence, you lose a facility that you cannot regain.

The President spoke more than he should have. He should have stuck with his adjectives about direct, precise and irrefutable.

The stories in the Washington Post and the New York Times would have told the Libyans and their East German advisers precisely which messages were compromised, and they have changed their procedures. It will be weeks, months, or years before we ever get more information warning of attacks. And Americans may pay for that with their lives.

LEHRER: How? How would an American pay for this with their lives?

CARVER: Because if we do not get a warning of a kind that we have gotten before and would have gotten if our ability to read certain types of Libyan communications were still intact, then lack of warning could easily cost people their lives.

LEHRER: What do you say to the news organizations who

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say, "Hey, wait a minute. If you want to go after leaked information, go after the people who leak it, not the people who publish it"?

CARVER: I think both should be gone after. I think people who leak in an unauthorized way should be fried in oil, or something else whould be done.

But I think that you have a statute that was drawn to take care of and protect a particular kind of ultra-sensitive ability. It specifically includes the word "publish," by congressional intent or design. It has been reviewed by the Ninth Circuit in San Francisco and by the Supreme Court. And I think it deserves to be enforced for the particular purpose for which it was drafted.

LEHRER: And against news organizations.

CARVER: Against news organizations. Who else publishes? And I think that the publication of communications intelligence which compromises our ability to get the same intelligence in the future is extremely damaging to the interests of us all, and is something that the government must protect.

LEHRER: Thank you.

ROBERT MACNEIL: Now a view from one of the newspapers named by William Casey, the Washington Post. Walter Pincus is that paper's national security correspondent.

Mr. Pincus, what do you think of the view George Carver just laid out?

WALTER PINCUS: Well, it's happened before and we've been through this before. I think in this particular instance this Administration, like other Administrations, has decided it wants to take a more active role, and they are going to go about it publicly. And we have been threatened before, not just the Post, but newspapers in general, for doing this.

I'm slightly amused at this new approach and bringing up a piece of statute that was passed 36 years ago that's never been enforced since.

There have been books written about communications intelligence that describe in exquisite detail what's gone on in the past. And as far as I know, no attempt has been made to move against any of those at the time they were brought out.

MACNEIL: Specifically, Mr. Carver's point, which I suppose would resemble Mr. Casey's, that in this particular

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ultra-sensitive area where publishing information about communications, intelligence communications, or the information that is the product of those communications compromises the ability to similar information.

PINCUS: Well, it's a chicken-and-egg situation. The Administration itself, through a series of its own spokesmen, made it abundantly clear, if not to the public at large, certainly to the Soviets, and, through them, certainly to the Qaddafi government, that we were intercepting messages. Going back even before the President's statement, there was a statement by General Rogers, who spoke rather specifically about the types of information we had...

MACNEIL: He's the commander...

PINCUS: ...and the solid proof.

The commander of NATO.

I cannot remember that General Rogers had anything said to him about it, as far as I know.

The President then takes it a step further. And what the Post was doing was really adding, as other people have, to the general background of this particular activity.

MACNEIL: What do you see as the press's responsibility in this area in deciding what to publish, in what it gets from officials who are leaking to the press, and what not to publish?

PINCUS: We do make decisions on those matters, and there are things that we have not published. It is not difficult to make a decision because it's obviously in many cases that things can hurt the public interest. And there are ways of avoiding doing some of the precise things that the President did to point to the fact that this kind of intelligence came through electronic intercepts.

I think the press, over the years -- and I'm really talking going back 10 and 15 years. This is not a new kind of intelligence. It's been going on since the late '50s. So we've been dealing with it for a long time, and I think we have withheld a great deal of information.

MACNEIL: Right now, the Post, according to the reports in your own newspaper, is sitting on another story which seems to be Mr. Casey's actual aim, to prevent you from publishing. What is your decision at the moment? Is the Post going to publish that story or not?

PINCUS: Well, I think that's something you'll just have

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to wait and see.

MACNEIL: I see.

Well, thank you.

LEHRER: Back to you, George Carver.

You heard what Mr. Pincus said, that decisions are made all the time by news organizations not to print various stories. What's wrong with a news organization making that decision?

CARVER: Well, I think it's fine if it makes a decision not to print. But I think making a decision to print stories that could compromise communications intelligence techniques and capabilities is, to my mind, irresponsible.

LEHRER: Under no circumstances should any story, no matter what the prefaces had been to that particular story?

CARVER: Not if it -- Jim, I will take an extreme view. Not if it could do further compromise to this particular narrowly defined type of intelligence capability. And I do not -- I hold the personal view that a newspaperman's rights under the First Amendment do not abrogate his or her responsibilities as a citizen. And I think that from the standpoint of a citizen, compromising our most delicate intelligence capabilities is a very irresponsible act.

LEHRER: How do you feel about that, Mr. Pincus, the difference in your role as a newspaperman versus that of a citizen?

PINCUS: I don't really see it as any different. I think we act as journalists and citizens in the same way. I think journalists have a different kind of approach to some of these matters.

But people like Mr. Carver avoid two specific things. One is, by overlooking casually the idea that somebody did give us that information. Somebody, in this case, who had access to what's supposed to be one of the most highly protected secrets around spoke to a journalist. We didn't steal it. We didn't get it undercover. It was given to us. So somebody else made a decision.

And I'm fascinated, as this particular exercise has raised it by this Administration, that they've been unable to sort of even make an attempt to indicate anywhere where this information came from.

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I'd like to point out one second thing about the so-called second story of the Post. And that is that it ought to be made clear to people that we, in determining what we're going to do with a lot of stories, go to the Administration and tell them what we have and listen to what their arguments are. And we then do make decisions, but we're not making them in the dark. And what's going on with the second story, I think, is a perfect example.

LEHRER: Is it your position, Mr. Carver, that the journalism organizations should not make those kinds -- those kinds of decisions should be left to the government?

CARVER: I think that with respect to whether or not communications intelligence facilities and capabilities are going to be compromised, those decisions have to be left to the government because they're the only people competent to make them.

Other decisions, no. Criticism, fine. But in this particular narrow field, I think the government's right must be paramount.

LEHRER: Mr. Pincus?

PINCUS: I get down to these petty things because it's the way I write things. I'd be interested in knowing what specific capability was compromised.

CARVER: Two things, without compounding the damage. The story in the Post contained precise times of the dates the messages were transmitted that were intercepted, when they were intercepted, their precise length, and quoted from their text. The Libyans and their East German advisers could hence have known precisely which communications procedures were vulnerable and which codes and ciphers we could read. Those could be changed, as I believe they have been. And it may be a very long time indeed, as I said, before we get any further warnings of terrorist depredations via that channel.

PINCUS: But you'd have to be a fool to believe that, given the President's statement, that they didn't realize that their codes had been broken. I mean he talks about messages being sent immediately. They're not doing it by smokescreen.

CARVER: Walter, there's a lot of difference between knowing that codes had been broken and knowing precisely which messages have been compromise. And I really don't feel that it was necessary for Bob Woodward to do whatever damage the President himself had not...

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LEHRER: Bob Woodward is the reporter for the Washington Post who...

CARVER: Whose bylined front-page story is the story we are discussing.

PINCUS: And the source of that, who want to boil in oil, you have -- there's just no way to find that out?

CARVER: I'm a simple retired civil servant. I can't find him out. But if he is found, I think that 798 should be applied to him, too, in its full rigor.

LEHRER: What about Mr. Pincus's earlier point that the stories about this kind of communication, spying by communication and electronic spying, there've been books written on it, exquisite detail about it, nothing new has come out?

CARVER: Well, that there have been books written in exquisite detail is true. Whether or not anything new has come out is another question. An I think we have been far too lenient in allowing people, such as my friend Jim Bamford, to publish books such as "The Puzzle Palace."

[Confusion of voices]

CARVER: ...specifically about the NSC.

LEHRER: Right.

CARVER: Which gave my friend Bobby Inman, who has been the Director of NSC, a case of almost cardiac arrest, for understandable reasons.

I think we are far too loose-lipped in this country. And as a result, we've compromised capabilities that we may one day desperately need, and put American lives at risk in ways that I find reprehensible.

LEHRER: Don't go away, gentlemen.

MACNEIL: Next we have the perspective of a political scientist who's done a study of press leaks in Washington. He is Stephen Hess, a senior fellow at the Brookings Institution.

Mr. Hess, you have actually classified leaks by the kinds of leaks there are. How is the press supposed to distinguish between leaks from officials that it should publish and leaks that it should not publish?

5 STEPHEN HESS: Well, I tend to think that the press doesn't give us much of a clue as to where the leak is coming

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from or why the person is leaking. The press seems, to me, to be interested solely in whether the leak is true or not.

Now, there are some leaks that are plain ego leaks. In fact, I think that's the biggest category in Washington. People leaking information are really saying, in a sense, "I'm important because I have important information."

There are leaks that are straightforward policy leaks.

Other leaks that I call animus leaks. They're aimed at an individual. They're to settle a grudge.

There are leaks that are trial-balloon leaks. You send something up and you see whether it's going to survive the publicity. I tend to think that those leaks mostly come from opponents of things, because it's so much easier to shoot something down.

And I think there are also whistle-blower leaks. Those are the only leaks that come, generally, from civil servants. They get so frustrated with something that they go public on it.

By and large, leaks come from political appointees. And after a while, a President has to recognize that he can't keep attacking the faceless civil servants, that the leaks are coming from people that he appointed, himself.

MACNEIL: What category would you put this leak into, the one that's caused a fuss with Mr. Casey and the Washington Post, on the interruption [sic] of communications with Libya and East Berlin?

HESS: Well, I don't know. And the interesting thing about leaks is they're not mutually exclusive. They can have more than one reason...

MACNEIL: ...ego trip and a policy...

HESS: And a policy leak. Or they can be sort of a [unitnelligible] reverse leak. It looks as if it's going to do one thing, but really you're doing another.

A funny example like that, also with Bob Woodward, was several years ago when the Post printed the secret minutes of the Secretary of State, Alexander Haig's early morning senior staff meetings, in which, among other things, he called the British Foreign Secretary, Lord Carrington, a duplicitous bastard. And though we all assumed immediately that that was someone trying to do in Alexander Haig, we now tend to believe, at least in the mythology in Washington, that it was leaked by someone who was

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friendly to Haig, and he was indeed trying to show that Haig was still in charge.

It's very hard to really...

MACNEIL: In deciding how the national interest is served in this particular case, there were a lot of people calling -- I remember we asked questions on this program -- for more information to back up or give credibility to the Administration's general claims that it had proof that the Libyans were involved.

HESS: Yeah. I think Mr. Carver is right int he case of this leak being -- he calls it a warning shot. I might want to all it a bluff. I think if you go after, by name, five major news organizations, you're not serious about prosecuting them. if you were, you would use a rifle and not a shotgun.

MACNEIL: Well, in the system, as the American system works, who is the better judge of what should be published, the press or the government?

HESS: Well, if you look at most Administrations, you would find that they're more leaked for than against. They, of course, call it a plant. If it's an authorized leak, it becomes a plant.

But in general, if we had a way of doing away with all leaks, I think it would be the President who would be, by far, hurt the most by that practice.

MACNEIL: Mr. Hess, thank you.

LEHRER: Do you agree with that, George Carver, that most leaks are in fact authorized?

CARVER: Some of them certainly are. But I would not want to say that most of them are. And most of them, I think, come from people who are either on ego trips or trying to sabotage policies, or are flattered by people in the press.

You know, "You're not important enough to know about this."

"Of course I'm important enough to know. Let me explain to you how important I am."

It's the oldest investigative technique in the business.

LEHRER: George Carver, you've been -- you were involved in this business for 26 years. When you read this story, the

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story we're talking about, the April 15th story in the Washington Post, it must have occurred -- and the other ones too -- it must have occurred to you, "Hey, I bet it was Sammy Sue or Billy Bob, or a type, who leaked that story." Who would have had a motivation for leaking that story?

CARVER: I don't know. But my suspicions instantly riveted on someone fairly senior, possibly on the White House staff, who didn't realize how much damage he or she could have been doing. I think that any professional officer, if he didn't have more sense than to do that, then he has no business drawing the government's money.

LEHRER: Walter Pincus, can you characterize the type of person who leaks this kind of information, intelligence information? Does it fall into all of Steve Hessl's categories, or mostly ego trippers, or what?

PINCUS: Well, they fall into different categories. But when you get this specific, my guess is that it clearly was -- and I don't know. My guess is that it clearly was somebody who had the information officially. If you look back to the time it came out, it came out at a time, as Steve has said, that they were trying to back up -- there were beginning to be questions raised about why we had done it. And it fit into that kind of category.

Also, I think I have to remind everybody there was no talk about a violation of any security when the story came out. The story has only come out in connection with Mr. Casey raising the issue of the second story.

CARVER: That's not true. There's been a great deal of seething in the government, which finally erupted.

PINCUS: But there was seething in the government prior to the President making his announcement. There was a fight within the Administration, where the intelligence people, as they usually do, and as you do, make a good case for keeping it secret. They lost. The President said more than he was supposed to say. And that was a calculated decision, and this one just took it one step further.

CARVER: And then, Jim, I think people on his staff wanted to show how able we were, and what they were doing handed the U.S. intelligence community a favor. And they were dead wrong.

LEHRER: All right. Then why go after these five news organizations for a White House staffer who was...

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CARVER: And I think they should also, if it is a White House staffer, go after him. The old French practice, you know, the old French comment about the English, who occasionally hang an admiral to encourage the others, is I think necessary. And I think here are a couple of admirals, both inside and outside the government, probably ought to be hung.

LEHRER: Steve Hess, what's history say about attempts of Administrations to close leaks, by whatever techniques?

HESS: Well, they always fail. And every Administration says, "We're the most leaked-against in history." And every Administration is right. There's simply more and more classified documents today. There are more and more duplicating machines today. There are more and more government officials who have access to classified information than ever before. There are more and more journalists in Washington. And there are going to be more and more leaks.

And to my way of thinking, there really has never been a successful way of dealing with the news organizations. I tend to agree with Walter Pincus earlier: The way you get at it is you go after the person in the government. And since these are the President's own people who do the leaking, President's should consider this more carefully in terms of who they choose to represent them.

LEHRER: Walter Pincus, does even the threat of criminal prosecution have an effect on the way the Washington Post and other news organizations will function on intelligence-type information like this?

PINCUS: One, I don't think so. Two, I hope not. Three, I don't think we'll change our system. I think we do weigh what we do.

LEHRER: You think a few criminal prosecutions would be good for the press. Right, George Carver?

CARVER: I think a few focused on this particular topic would be salutary for the press and for the country. Not generaly stopping of criticism, but protecting communications intelligence, on which our survival could easily depend.

LEHRER: Do you think that Steve Hess is right, that they're really bluffing now? Or do you think they really mean it this time?

CARVER: Well, I think, as of today, they mean it. The Justice Department would have to decide to prosecute if another

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story is published. There'd be a lot of discussion, and it might come to naught. But I think that certainly Mr. Casey means it, and the Director of the National Security Agency means it. And I can well understand why.

LEHRER: ...Thank you very much.

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